

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ORLANDO PEREZ, JR.,)	CASE NO.: 3:19CV1013
)	
Petitioner,)	JUDGE JOHN ADAMS
)	
)	
WARDEN ED SHELDON,)	<u>MEMORANDUM OF OPINION</u>
)	<u>AND ORDER</u>
Defendant.)	
)	

This matter appears before the Court on objections to the Report and Recommendation (“R&R”) of the Magistrate Judge (Doc. 26) filed by Petitioner Orlando Perez. Upon due consideration, the Court overrules the objections and adopts the Report and recommended findings and conclusions of the Magistrate Judge and incorporates them herein. Therefore, it is ordered that the petition is hereby DENIED, and this matter is hereby DISMISSED.

Where objections are made to a magistrate judge’s R&R this Court must:

must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

Fed. R. Civ. P. 72(b)(3).

Initially, the Court notes that Perez has not filed objections to the R&R that resolved the merits of his petition on November 3, 2022. Instead, Perez appears to be objecting to the order that denied his motion to stay his proceedings. However, that order was issued on March 14,

2022, and Perez did not file objections to it until his current objections that were filed on December 5, 2022. As such, Perez failed to file timely objections. Fed.R. Civ.P. 72(a).

However, even if this Court were to consider Perez's untimely objections, it would not alter the result herein. Perez sought to stay the matter contending that he wished to raise an unexhausted claim of ineffective assistance of trial counsel in the state court. The Magistrate's order properly determined that no mechanism existed to allow Perez to return to state court to raise a new claim and that he could not demonstrate any semblance of merit in the ineffective assistance of counsel claim he sought to raise. As such, the Magistrate properly found that no stay was warranted in the matter.

As Perez has filed no substantive objections to the R&R, the R&R is adopted in whole. Perez's petition is hereby DENIED, and this matter is hereby DISMISSED.

The Court certifies, pursuant to 28 U.S.C. §1915(A)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability.

This Order is entered pursuant to Federal Rule of Civil Procedure 58.

IT IS SO ORDERED.

Date: December 20, 2022

/s/ John R. Adams
JUDGE JOHN R. ADAMS
UNITED STATES DISTRICT JUDGE